Fair Political Practices Commission
MEMORANDUM

TO: Chairman Randolph, Commissioners Blair, Downey, Kaplan and Knox

FROM: C. Scott Tocher, Counsel, Legal Division
Luisa Menchaca, General Counsel

DATE: December 29, 2003

SUBJECT: Issues Memo: Sections 85303 and 85310 –Expenditures by Candidate-Controlled Ballot Measure Committees

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EXECUTIVE SUMMARY

This memorandum initiates a discussion of the issues surrounding application of section 85310, which partially governs issue advocacy, to candidate-controlled ballot measure committees. The experience of the recent gubernatorial recall election has raised the issue of whether campaign contribution limits should apply to ballot measure committees that are controlled by candidates when payments are made for advertisements in which the candidate appears. The Commission will be asked to determine whether a candidate may be said to "behest" payments from his or her own committees. Also, the Commission will be asked to consider whether ballot measure committees can, within constitutional constraints, be subject to contribution limits. The Commission has advised that such committees are not subject to contribution limits. In the recent *Johnson v. Bustamante* case, a superior court judge had the opportunity to rule on the applicability of limits in such circumstances but did not rule on that issue. These issues, and others discussed below, have implications beyond merely the recall setting and will affect all elections. Because the Commission in the context of interpreting section 85310 and candidate-controlled ballot measure committees has not considered these issues, the Commission directed staff at the December 2003 meeting to present the issues for consideration at the following meeting. To the extent the Commission elects to pursue adoption of a regulation codifying its interpretation, the Commission has scheduled such consideration for pre-notice consideration at the April, 2004 meeting.[1]

Recommendation: As specifically discussed below, staff recommends the Commission proceed with pre-notice discussion of a draft regulation in April, 2004. The staff will conduct an interested person's meeting in the meantime. The issues to be considered at the meeting which will inform the prenotice discussion in April are:

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[1] The Commission also has scheduled a pre-notice discussion of possible amendments to regulation 18531.5, governing recall elections. That project entails a discussion of whether to continue to allow candidates to control ballot measure committees and for those committees to operate free from contribution limits. Though similar issues are implicated in both the 18531.5 and 18531.6, they are handled separately for purposes of this discussion memorandum, which is limited to a discussion of the latter. It is anticipated both regulations will be considered simultaneously at a future interested persons' meeting.

- What does it mean to "clearly identify" a candidate? Is regulation 18225 sufficient? How does statutorily required identification impact the equation?
- Can a candidate behest his or her own payments?
- Can a ballot measure committee constitutionally be subjected to contribution limits?
- What is the scope of the $25,000 limitation?
- Must the Commission develop a system of attribution in the event section 85310 applies to candidate-controlled ballot measure committees?

I. PRIMARY ISSUE PRESENTED:

Does section 85310 operate to effect a $25,000 limit on contributions received by a candidate's own ballot measure committee for advertisements which feature a candidate?

II. CONCLUSION SUMMARY:

Though neither the plain language of the statute nor constitutional doctrine expressly prohibit application of section 85310 in the manner identified above, such an application may be contrary to existing Commission policies and historical interpretation.

III. BACKGROUND.

Section 85310 requires, among other things reporting of certain payments made for communications that identify, but do not expressly advocate for, a candidate. In 2002, the Commission adopted regulation 18539.2 to describe the method and substance of those reports. In the first quarter of this year, the Commission adopted a fact sheet discussing the applicability of the recall election statute, 85315, in the context of the recall election. In July, the Commission adopted regulation 18531.5, which concluded that committees formed primarily to oppose or support the recall election were *not* subject to contribution limits. (Reg. 18531.5, subd. (b)(3).) The Commission followed up this regulation by revising its Recall Fact Sheet the following month. In August, the Commission, on the basis of long-established Commission policy and the case of *Citizens Against Rent Control v. Berkeley,* (1981) 454 U.S. 290, advised that replacement candidates could control ballot measure committees formed primarily to support or oppose the recall election and that such committees were not subject to the contribution limits of the Act. (Recall Fact Sheet, rev'd 07/03, Q's. 9, 11.) The Fact Sheet also addressed the provisions of section 85310, and stated:

> **"22. How do the issue advocacy disclosure provisions (section 85310) apply to a state recall?**
> Section 85310 requires disclosure of communications identifying a state candidate made within 45 days of an election. This provision is designed to provide disclosure of large payments (over $50,000) for communications used for issue advocacy campaigning. Payments for such election-related

> communications identifying a state candidate might otherwise go undisclosed because they do not expressly advocate the election or defeat of a state candidate, and are therefore not required to be reported as independent expenditures. The disclosure requirements of section 85310 do apply in a state recall election to certain payments for communications identifying state candidates that are not otherwise disclosed. (If a payment for a communication identifying a state candidate is otherwise reported as an independent expenditure, the payment need not be reported under section 85310.)"

The paragraph above makes no reference to the application of the limiting provision of section 85301, subdivision (c), to recall ballot measure committees controlled by candidates. In fact, when the fact sheet was approved by the Commission, among those members of the public who argued candidates should not be allowed to control ballot measure committees, none made the argument that in the alternative section 85310 applied to limit such expenditures in the circumstances here. The Commission advised candidates and the public that ballot measure committees regarding the recall could be controlled by candidates and were not subject to the contribution limits in the Act.

IV. Government Code Section 85310.

The relevant portions of section 85310 are as follows:

> "**§ 85310. Communications Identifying State Candidates.**
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> "(a) Any person who makes a payment or a promise of payment totaling fifty thousand dollars ($50,000) or more for a communication that clearly identifies a candidate for elective state office, but does not expressly advocate the election or defeat of the candidate, and that is disseminated, broadcast, or otherwise published within 45 days of an election, shall file online or electronically with the Secretary of State a report disclosing the name of the person, address, occupation, and employer, and amount of the payment. The report shall be filed within 48 hours of making the payment or the promise to make the payment.
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> …
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> "(c) Any payment received by a person who makes a communication described in subdivision (a) is subject to the limits specified in subdivision (b) of Section 85303 if the communication is made at the behest of the clearly identified candidate."

It is profitable to reduce subdivisions (a) and (c) to their elements. The elements are set forth below. Those which are bolded are elements staff has identified as likely to generate substantial discussion that may require attention during the regulatory adoption process:

(a) 1. A person
2. Who makes a payment of $50k+[2]
3. That "**clearly identifies**" a candidate for elective state office
4. but does not **expressly advocate** defeat/election of the candidate
5. w/in 45 days of an election must report….[3]

(c) 1. Payment received by a person ((a)(1) above)
2. Who makes a communication described above
3. Is subject to $25k limit of 85303(b)
4. If the communication is **made at the clearly identified candidate's behest.**

A. "Clearly Identified."

Subdivision (a) of section 85310 pertains to a communication that "clearly identifies" a candidate for state elective office. While the statute itself does not define this term, regulation 18225 defines those terms in a different context – defining the term "expenditure." An "expenditure" is defined in regulation 18225 to include "any monetary or non-monetary payment made by any person, other than those persons or organizations described in subsection (a), that is used for communications which expressly advocate the nomination, election or defeat of a clearly identified candidate or candidates, or the qualification, passage or defeat of a clearly identified ballot measure." (Reg. 18225, subd. (b); underlining added.) Subdivision (b)(1)(A) defines "clearly identified" as follows:

> "(A) A candidate is clearly identified if the communication states his name, makes unambiguous reference to his office or status as a candidate, or unambiguously describes him in any manner."

Applying the term "clearly identified" to the matter at hand raises two questions: 1) whether the appearance of a candidate in an advertisement satisfies the definition of "clearly identifies;" and 2) whether the disclosure statement containing the candidate's name and required with such advertisements by advertising disclosure statutes (regardless of whether the candidate "appears" in the ad) also meets the definition of "clearly identifies."

With regard to the first question, regarding appearances in the communication, application of the term "clearly identifies" to potential advertisements is difficult in the absence of the particular facts surrounding a given communication. It can be argued that so long as the

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[2] Several issues may arise within this element, such as whether and how payments are to be aggregated if multiple contributions come from the same source. Also, the question arises whether one apportions the payments if more than one candidate appears in an advertisement.

[3] Staff has interpreted "an election" to mean a ballot on which the candidate identified appears.

candidate does not 1) state his or her name; 2) mention his or her office or status as a candidate; or 3) describe himself or herself, then the candidate may appear in the advertisement and not implicate this element of subdivision (a) of section 85310. Strictly speaking, nothing in the regulation or statute uses the word "appears" or "appearance" or "features" to describe the covered conduct. (*Cf.*, Reg. 18901, subd. (c)(2) (defining scope of mass mailing prohibition to cover items that feature an elected officer to mean the item includes the officer's photograph or signature, or singles out the officer by display of his or name).) As a result, it is staff's view that the mere "appearance" by the candidate and discussion of the reasons he or she opposes a proposition may not, in and of itself, constitute clear identification of the candidate.

It must be restated, however, that the inquiry is necessarily a fact-dependent one, one that can spawn multi-layered hypotheticals reaching different conclusions based on only the slightest factual alterations. It may be observed, as well, that the absence of "appears" or similar language in both the statute and the regulation may have a logical explanation: if, as is discussed more fully below, section 85310 was a statute designed to reach issue advocacy by an independent third party that discusses or mentions a given candidate, such as sending out a mailing praising a legislator for a recent vote, then the more limited scope of "clearly identifies" makes sense because the communication would be paid for independently of the candidate (and thus not a contribution and therefore reported as such in the normal course of affairs). Otherwise, the only apparent hook on which to hang an interpretation that equates appearance in an advertisement with "clearly identifies," would be to argue that appearing in an advertisement is the same as "describ[ing] him[self or herself]," under regulation 18225. Since the word "describe" usually connotes an active, verbal endeavor that illuminates the particulars of the object, it would seem a bit of a stretch to say that the use of an image of a person is the same as "describing" oneself. (See Webster's Third New Int'l Dict., (1993), at p. 610 ("to represent by words written or spoken for the knowledge or understanding of others;" "to communicate verbally from the results of personal observation an account of salient identifying features of (something existing in space);…").)

The second question of application asks whether the advertising disclosure required by sections 84503 and 84504, which as applied require a candidate's name to appear in any advertisements, would satisfy the elements of "clearly identifies." On its face, such disclosure clearly "states his name" or her name (regulation 18225) and is therefore within the scope of the regulation. While the question has been raised whether the Commission would implement a policy based on the required disclosure of the advertising requirements, nothing in the statute or regulations indicate that disclosure required by law are not within section 85310's purview. Any regulatory approach, whether by amendment of existing 18225 or adoption of a new regulation, will have to address the issue of statutorily required identification.

Of course, to the extent that regulation 18225 is deemed to fail to reach or adequately address the conduct at issue, the Commission may decide to amend regulation 18225 (defining "expenditure) or adopt a regulation tailored specifically to section 85310. Commission staff will seek input from the public at the interested persons' which may assist the Commission in its direction on this issue.

B. Express Advocacy.

The second important element of subdivision (a) of section 85310 is the limitation of the statute to communications that do not "expressly advocate the election or defeat of the candidate." The issue has been raised by others whether the appearance of a candidate in such advertisements, without using magic words advocating the candidate's election, while the candidate also is running for office (such as the existing circumstances) would nevertheless constitute "expressly advocate[ing]" the candidate's election. One must be mindful that if such a communication *were* found to constitute express advocacy, the statute would not apply. In any event, because the law governing words of express advocacy is fairly specific in its limitation, it is highly unlikely that such conduct would constitute express advocacy.

"Express advocacy" is a term crucial to government regulation of campaign advertising. Its central importance grew out of the Supreme Court's initial review of the Federal Election Campaign Act, where the Court found that the First Amendment will sanction regulation of campaign speech when that speech contains what has come to be called "express advocacy." Thus in California any person spending more than a threshold amount on speech that includes "express advocacy" becomes a "committee" under the Act, subject to associated public filing and disclosure obligations, and contribution limits. Although the Supreme Court recently expanded the scope of conduct that can be regulated during elections to include "electioneering" activities, that ruling may not directly impact the analysis here because the statute at issue in California uses the words "express advocacy." Staff will examine the Court's opinion in *McConnell v. FPPC* for possible assistance in interpreting this element of the statute in the meantime preceding the prenotice hearing in April.

Turning to the Act, regulation 18225, subdivision (b)(2), states:

> "A communication 'expressly advocates' the nomination, election or defeat of a candidate … if it contains express words of advocacy such as 'vote for,' 'elect,' 'support,' 'cast your ballot,' 'vote against,' 'defeat,' 'reject,' 'sign petitions for' or otherwise refers to a clearly identified candidate or measure so that the communication, taken as a whole, unambiguously urges a particular result in an election."

Assuming that the communications contemplated by a campaign do not uses the specific words above with regard to a given candidate, then it is highly unlikely such communications would constitute express advocacy. This is especially true in light of the recent California court rulings on these matters,[4] which disfavor a contextual-based analysis and prefer a "magic-words" type test. In the event such communications *were* found to be express advocacy, the expenditures for them would then subject the filer to different provisions of the Act governing committees primarily formed to support or oppose a candidate.

C. <u>Communications made at the candidate's behest</u>.

Drawing from the recent recall election to illustrate, the plaintiff in *Johnson* asserted that because Mr. Bustamante controlled the ballot measure committee, any communications that featured him would necessarily be made at the "candidate's behest." (§ 85310, subd. (c).) The question posed by this interpretation is whether a candidate can be said to "behest" his or her own payments. Senator Johnson has appeared before the Commission and insisted the answer to this question is "yes."

Regulation 18225.7 defines "made at the behest of" as follows:

> "(a) 'Made at the behest of' means made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of. Such arrangement must occur prior to the making of a communication described in Government Code section 82031.
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> "(b) Expenditures 'made at the behest of' a candidate or committee include expenditures made by a person other than the candidate or committee, to fund a communication relating to one or more candidates or ballot measures 'clearly identified' as defined at Title 2, California Code of Regs. section 18225(b)(1), which is created, produced or disseminated, … ."

On its face, it may be argued that subdivision (a) of regulation 18225.7 reaches the conduct at issue insofar as the definition includes "made under the control" of. On the other hand, subdivision (b) seems to suggest, in fleshing out the meaning of subdivision (a) further, that the scope of the regulation is intended to reach communications "made by a person *other* than the candidate." (Italics added.) Moreover, if section 85310 were intended to address expenditures from a candidate's own controlled committee, it is doubtful that the framers would have used such obtuse language in the statute. Accordingly, because the statute and regulations are arguably subject to more than one meaning, it is appropriate to examine the background of both to determine if there is any guidance on this matter.

Turning to the statute itself, nothing in the ballot pamphlet regarding Proposition 34, from which section 85310 came, addresses the meaning behind the statue. While the ballot

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[4] The decisions referenced here are *Schroeder v. Irvine City Council et al*, 97 Cal.App. 4th 174 (review den. June 26, 2002), and in *The Governor Gray Davis Committee v. American Taxpayers Alliance*, 102 Cal.App.4th 449 (review den. December 22, 2002).

arguments speak generally of the use of money in campaigns, nothing specifically addresses the issues of interpretation regarding this section.

With regard to regulation 18225.7, there is considerable evidence that the term "made at the behest" contemplates a necessary third party to the transaction producing the communication. Over the past two years, the Commission has considered and adopted amendments to regulation 18225.7.[5] In March of 2003, the Commission adopted amendments to this regulation. At that time, the Commission considered a draft of the regulation that contained a subdivision stating that expenditures "made at the behest" of a candidate or committee include expenditures "made by or through the candidate or committee." (Ex. to Staff Memo., "Expenditures at the Behest of Candidates or Committees. Adoption of Amendments to Regulation 18225.7; Adoption of Regulation 18550.1", 2/21/03, Draft Reg. 18225.7, proposed (b)(1).) During the hearing on the proposed amendments, it was observed by several commissioners that the proposed subdivision (b)(1) quoted above was "confusing" because "at the behest" implied that a third party was involved. (Minutes, Comm'n mtg. of 3/7/03, at p. 2.) Other commissioners echoed this sentiment, including a statement by former Chairman Getman that an expenditure made by the candidate or by an agent of the candidate "is simply made by the candidate and is not behested." (*Id*., at pp. 2-3.) There was no objection to deleting the proposed language and the present language of regulation 18225.7 contains no such application.[6] The staff will continue to examine this issue if the Commission so wishes.

As the history of the adoption of regulation 18225.7 shows, the term "at the behest" is not contemplated in scenarios involving solely the candidate acting alone amongst his or her controlled committees. It is a persuasive, though not unimpeachable, argument that section 85310, in using such a term, does not reach the circumstances at issue herein.

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[5] Regulation 18225.7 has been the subject of prenotice and amendment adoption discussions by the Commission in July and September of 2002 and January and March of 2003.

[6] There are approximately a dozen references in the staff memoranda and minutes of Commission meetings that suggest to varying degrees agreement that the scope of "at the behest" addresses third-party transactions. See, for instance, the Prenotice Staff Memorandum, June 24, 2002, considered at the Commission's July, 2002 meeting, which introduces the context of the attempts to regulate "coordinated" expenditures:

> "… Contribution limits are thought by some to encourage the diversion of funds to expenditures by third persons on behalf of candidates, who would otherwise have received the funds directly, in the form of (larger) contributions. Third-party expenditures for or against candidates have been rising in jurisdictions all across the country, however, and it does not appear that this trend is driven exclusively by the increasing popularity of contribution limits. …
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> "Expenditures on campaign speech and thinly veiled 'issue advocacy,' when ostensibly made by persons other than candidates, may or may not be the products of campaigns coordinated with candidates. …"

D. Other Issues:

1. Section 85303 and the $25,000 Limit:

Subdivision (c) of section 85310 states that any payment "received by" a person "who makes a communication" that clearly identifies a candidate and is made at the candidate's behest is "subject to the limits specified" in section 85303, subdivision (b). Turning to section 85303, that statute provides a $25,000 limit for contributions to political parties. Two important questions arise: 1) Does the $25,000 act as a limit on the overall amount any contributor can donate to the person making the payment or does the threshold apply only to the contributors whose monies are used to make payments for the advertisement; and 2) is the $25,000 subject to the biannual adjustment for cost-of-living? As to the first question, the statute is plausibly susceptible to either interpretation. As to the second question, the Commission has adjusted that amount (regulation 18545) for political parties. The question will be whether the Commission interprets the reference to the statute as inclusive of regulator adjustments, as well.

2. Attribution of Payments:

In the event the Commission concludes that section 85310 applies to a candidate's own controlled ballot measure committee and places a limit on the payments that can be used for advertisements clearly identifying the candidate, the Commission will have to determine an accounting method to assist ballot measure committees in identifying which contributions have been used to fund a given communication. For instance, a committee may have a list of 5,000 contributors since its inception. If five of the most recent contributors donated $100,000, a method must be used to determine whether an expenditure for an advertisement came from the most recently funds or the earliest. The Commission may need to borrow from the LIFO/FIFO method of attribution used by candidates who transfer funds from one committee to another.

IV. CONSTITUTIONAL FACTORS

As stated earlier, existing advice regarding candidate controlled ballot measure committees states that no limits apply to such committees. This conclusion is based on long-standing Commission advice, rooted in the U.S. Supreme Court's holding in *Citizens Against Rent Control*. In *Citizens*, the Court struck down a local ordinance limited contributions to ballot measure committees. In so doing, the court stated that there is "no significant state or public interest in curtailing debate and discussion of a ballot measure." (*Citizens*, *supra*, 454 U.S. at p. 299.) Distinguishing the acknowledged interest in limiting contributions to candidates, the Court stated that the "risk of corruption perceived in cases involving candidate elections simply is not present in a popular vote on a public issue." (*Id*., at p. 298.) This analysis was footed not only on the grounds of the First Amendment right of free speech but also the right of association, indicating the rights overlap and blend and are both violated by such limits. (*Id*., at pp. 298—299.) This case raises the issue, then, of whether contribution limits can be applied to *any* type of ballot measure committee – candidate-controlled or otherwise.

While certainly the Commission has properly applied this holding in advice in the past regarding contributions to ballot measures, the current discussion asks whether candidates running in a state election should be able to control ballot measure committees without limit. Though not expressly stated as such, the application of section 85310 suggested by some is a limitation on *all* candidate-controlled ballot measure committees – especially if the disclosure required by advertising disclosure statutes is construed to bring communications by the committees within the ambit of section 85310. In other words, it would not matter whether the candidate appeared physically in such communications – his or name *must* appear and every communication (over $50,000) would be subject to the limitation.

While such a holding, by this Commission or a court, would seem to reverse prior law and policy, in fact the *Citizens* case arguably allows such a construction. No doubt Senator Johnson and others will argue, with some reason, that *Citizens* did not consider candidate-controlled committees and that the danger of corruption present in run-of-the-mill candidate committees is present in *all* candidate-controlled committees – even ballot measures. Presumably, proponents would argue that the candidate is in danger of becoming beholden to large contributors regardless of whether the contributions are directed to the candidate's own election committee or a committee controlled by the candidate to promote the candidate's pet issue.

Earlier cases grappling with the constitutionality of prior restraints on candidate activity are instructive. While ultimately striking down an intra-candidate transfer ban,[7] the federal district court and Ninth Circuit suggested in the *Service Employees International Union v. FPPC* cases that such a ban might survive constitutional challenge if it were in the context of a valid contribution-limit scheme (which was thrown out in Proposition 73). How, precisely, this reasoning cuts in the instant matter is debatable, however. Since there are no limits on the candidate's old pre-34 committee and because there are no contribution limits on ballot measure committees, there arguably are no contribution limits that are being protected by section 85310. If, however, one changes the focus to the *candidate* making the expenditure out of his ballot measure committee, then one could argue that section 85310 supports the contribution limit scheme in place with respect to *candidates*. While plausible, the problem with such a construction is that there is no indication in the record that that was the intent of the statute. Certainly if it was the intent then a logical question arises – if section 85310, subdivision (c), was meant to buttress candidate contribution limits, then why is the amount referenced ($25,000) in subdivision 85303, subdivision (b), more than eight times the amount otherwise applicable to Assembly candidates, two and a half times larger than the limit for State Senate candidates, and $5,000 more than governor? One would think that a limitation placed to prevent circumvention of the limits on candidates would actually refer, at least, to the provisions limiting contributions

[7] An "intra-candidate" transfer refers to a transaction between a candidate's own controlled committees, such as from Senator Jones' Senate committee to her future gubernatorial committee.

to candidates (sections 85301-85302) instead of limitations on contributions to political parties (section 85303, subdivision (b).)

V. SUMMARY

Section 85310 was probably intended to address the issues which colloquially have come to be known as "issue advocacy." By its operation, section 85310, subdivision (a), captures payments for communications that *otherwise* would go unreported. It does this because payments by a third party that is not otherwise a committee, such as a group paying for a billboard to praise a legislator on an issue, would go unreported because the communication defined in subdivision (a) does not contain express advocacy (which would then qualify the payor as a committee under sections 82013 and 82031).[8] Thus, the advice given in Question 22 of the Recall Fact Sheet states section 85310 applies to payments "that are not otherwise disclosed. (If a payment for a communication identifying a state candidate is otherwise reported as an independent expenditure, the payment need not be reported under section 85310.)" Subdivision (c) limits contributions to such payors where the payor makes the payment at the candidate's behest. In this way, while the payor's speech rights are recognized, the fact that the communication is made at the request or control of a candidate lessens the spontaneous nature of the communication and affords it less protection by way of the $25,000 limitation.

To use a metaphor, it is *possible* to dress the conduct at issue here – not generally issue advocacy – in the jacket of section 85310. For the reasons discussed above, the statute plausibly can be given such a new application. But nowhere in the history of its adoption or application, nor in the Commission's interpretation of related concepts and policies, has such an interpretation been foreshadowed. To do so would result, to some extent, in a revision of past Commission policies with respect to ballot measure committee limits. Nevertheless, staff recommends the Commission should consider further whether section 85310 is intended to reach the candidate-controlled ballot measure committees and examine different approaches to address the issues unique to those types of committees.

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[8] Staff recently gave this explanation of the term "issue advocacy:"

> " 'Independent expenditures' (as defined at § 82031) must not only be independent, but must *expressly advocate* the election or defeat of a clearly identified candidate. Media consultants have begun in the last few years to avoid words of 'express advocacy' even in candidate-sponsored advertisements, on a theory that the public reacts negatively to direct imperative speech. Expenditures by persons other than candidates, on similar advertisements promoting a candidate without words of express advocacy, cannot therefore be classified as 'independent expenditures' under § 82031. No term has yet been coined for this form of candidate advocacy, and 'issue advocacy' is often pressed into service, even when 'issues' are highlighted only to promote a candidate." (Staff Memo., 6/24/02, "Prenotice Discussion of Regulations Defining Coordinated Expenditures; Repeal and Reenactment of Regulation 18225.7.")